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# Benevolent and Protective Order of Elks v. Salt Lake County Board of Equalization and Earl M. Baker, Salt Lake County Assessor, Tax Commission of the State of Utah : Brief of Petitioner

Utah Supreme Court

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### Recommended Citation

Legal Brief, *Order of Elks v. Tax Commission and Salt Lake County Board*, No. 13826.00 (Utah Supreme Court, 2001).  
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UTAH SUPREME COURT

BRIEF

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STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

BENEVOLENT AND PROTECTIVE  
ORDER OF ELKS, NO. 85,

vs.

SALT LAKE COUNTY BOARD OF  
EQUALIZATION and EARL M. BAKER,  
SALT LAKE COUNTY ASSESSOR,

and

TAX COMMISSION OF THE  
STATE OF UTAH,

*Petitioner,  
Plaintiff,*

*Defendants,  
Respondents.*

Case No.  
13826

BRIEF OF PETITIONER

Action in Certiorari to Review the Proceedings  
and Order of Tax Commission of the State of Utah

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FILED  
1974

Clerk, Supreme Court, Utah

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

---

BENEVOLENT AND PROTECTIVE  
ORDER OF ELKS, NO. 85,

*Petitioner,*

vs.

SALT LAKE COUNTY BOARD OF  
EQUALIZATION and EARL M. BAKER,  
SALT LAKE COUNTY ASSESSOR,

and

TAX COMMISSION OF THE  
STATE OF UTAH,

*Respondents.*

Case No.  
13826

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BRIEF OF PETITIONER

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STATEMENT OF THE NATURE  
OF THE CASE

This is an original action in certiorari to review certain proceedings, decisions, and orders of the Salt Lake County Board of Equalization wherein certain properties in Salt Lake County were not exempted by the Salt Lake County Board of Equalization for the year 1973.

RELIEF SOUGHT ON APPEAL

Petitioner seeks review and reversal of the decision of the Tax Commisison and the County Board of Equal-

ization, and that the case be remanded to the State Tax Commission directing said agency to make and to enter its decision that the said Elks' Lodge is being used exclusively for charitable purposes as that term is defined by Article XIII Section 2 of the Constitution of the State of Utah, and Utah Code Ann. § 59-2-1 (1953), and that the same be exempted from taxation for the year 1973.

### STATEMENT OF FACTS

Petitioner, B.P.O.E. No. 85, is a corporation existing under and by virtue of the laws of the State of Utah.

The Salt Lake County Board of Equalization is the Board of Salt Lake County Commissioners existing by virtue of the laws of the State of Utah.

Petitioner owns certain improved property located at 139 East South Temple, Salt Lake City, Utah, commonly known as the Elks' Lodge. An *ad valorem* property tax was assessed against said property by Salt Lake County for the year 1973.

The said property had not been subject to taxation in the past by virtue of a charitable exemption. An application seeking exemption was filed by the Petitioner with the Salt Lake County Board of Equalization pursuant to Utah Code Ann. § 59-7-2.8 (1953) under letter dated June 9, 1973.

The functional breakdown of the Elks' Lodge building was adduced from testimony taken before the

State Tax Commission. The building is comprised of six floors, including the basement. A small members-only lounge and a larger lounge comprise somewhat less than 65% of the basement area, the remainder being used for the general maintenance of the building. On the first floor, approximately one-half of the area is a kitchen and dining area and the other half consists primarily of a lobby and office space. Two-thirds of the second floor is occupied by the Lodge Room, the remainder containing committee rooms, a lounging area, and storage space. The entire usable space of the third floor is occupied by the Goodwill Room. Except for one committee room, the fourth and fifth floors are entirely used as storage areas for various Lodge supplies.

The subject property is utilized for the charitable and fraternal objectives of Petitioner. No part of the building is leased to any third party. One significant charitable use of the property is the Goodwill Room, which for many years has provided clothing to the needy. Using the Lodge building as a headquarters, Petition has also sponsored such program as a scout troop for the handicapped, a drug abuse program, youth athletic programs, assistance to new citizens, scholarships, veterans' services and others. Petitioner also maintains many of its fraternal and related social functions on the said property. Thousands of man-hours and a considerable amount of goods have been donated, and over \$29,000 in cash has been expended for charitable purposes.



After the decision of the County Board of Equalization, applicant filed a notice of appeal to the State Tax Commission of Utah. A formal hearing was thereafter held by the State Tax Commission on July 2, 1974. The Tax Commission issued a decision on August 26, 1974, which affirmed the decision of the Salt Lake County Board of Equalization. Among other things, the Tax Commission found that while

“appellant performs patriotic, charitable, and civic functions, which include an annual Christmas party for the crippled and the handicapped, Elks’ Boys and Girls Clubs, Scouts, youth scholarship programs, and veterans’ remembrance programs—all of which renders a great service to the community . . . such participation does not constitute the *exclusive* charitable use of property . . .” (Emphasis added).

The Tax Commission then went on to *wholly* deny Petitioner’s application for exemption.

Petitioner filed its petition for review with this Court on September 24, 1974. On September 24, 1974, this Court issued its writ of review based on this petition and directed the Tax Commission of the State of Utah to certify its records and proceedings to the Supreme Court, further directing said Commission to give notice of the pendency of the writ to each party in the proceedings.

## ARGUMENT

## POINT I

THE ELKS' LODGE WAS BEING USED FOR CHARITABLE PURPOSES SO AS TO QUALIFY IT FOR EXEMPTION FROM TAXATION UNDER ARTICLE XIII SECTION 2 OF THE CONSTITUTION OF THE STATE OF UTAH AND UTAH CODE ANNOTATED § 59-2-1 (1953).

Article XIII Section 2 of the Constitution of the State of Utah provides in part:

“All tangible property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The property of the state, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes . . . shall be exempt from taxation . . .”

The relevant portions of Utah Code Ann. § 59-2-1 (1953), provide:

“The property of the United States, of this state, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively

for either religious worship or charitable purposes, . . . shall be exempt from taxation.”

The delineated requirements for exemption of property used for religious worship or charitable purposes are provided in Utah Code Ann. § 59-2-30 (1953). In codifying these requirements, this section’s intent is to merely clarify the exemptions already granted, and not to “expand or limit the scope of such exemptions.”

Petitioner is organized to further and carry on the objective and purposes fully set forth in the constitution and by-laws of the incorporated society of Benevolent and Protective Order of Elks. This nonprofit character of the corporation itself is an essential element for tax exemption. *Friendship Manor Corp. v. Tax Comm’n.*, 26 Utah 2d 227, 487 P.2d 1272 (1971). The property in that case was not exempt from taxation, however, because unlike the case at bar, neither the nonprofit organization nor its property were established or used for any charitable purposes and the state was thus not relieved of any burden. The test employed to determine the nonprofit nature of the organization is by examination of the purposes of the organization as set forth in the articles of incorporation, rather than whether or not its property in fact made a profit. *William Budge Memorial Hosp. v. Maughan*, 79 Utah 516, 3 P.2d 258 (1931).

Petitioner is not organized to produce a profit from the property in question. Dues from members and revenues from the lounge and dining room are used for

the maintenance of the purposes of the lodge, and not for private benefit. It is to be noted parenthetically that Petitioner does own nearby property which has been rented commercially. The Lodge has paid and does pay taxes without objection on that property, and this is not at issue in the instant case.

Property used for religious worship or charitable purposes is expressly exempted from the general rule of universal taxation:

“The exemptions thus expressly granted . . . form an exception to the general rule that every species of property within the state is liable to bear its just proportion of the public burden. Any property falling within the exception is released from this burden, and such release is justified on the theory that the state derives some peculiar benefit . . . from such property.” *Parker v. Quinn*, 23 Utah 332, 338, 64 P. 961, 962 (1901).

Petitioner contends that he has met his burden to show that the Elks' Lodge is exempt from taxation by reason of a charitable use. Utah has established a rule of liberal construction in interpreting claims for exemption for certain types of property from which the state derives public benefits. This rule of liberal construction was formulated by this Court in *Salt Lake Lodge No. 85, B.P.O.E. v. Groesbeck*, 40 Utah 1, 8-9, 120 P. 192, 194 (1911) as follows:

“The general rule is that when private prop-

erty is claimed to be exempt from taxation the law under which the exemption is claimed will be strictly construed. . . . There is, however, an exception to this general rule, and statutes exempting property used for educational and charitable purposes or for public worship, under the great weight of authority, should receive a *broad and more liberal construction* than those exempting property used with a view to gain or profit only. The reason for the rule is that the state, by exempting property used exclusively for one or more of the purposes mentioned from taxation, is presumed to receive benefits from the property equivalent at least to the public revenue that would otherwise be derived from it. And manifestly the purpose of the statute in exempting property used exclusively for charitable purposes is to encourage the promotion of institutions and organizations having for their object the care and maintenance of the indigent and destitute citizen, the helpless orphan and the poor who are sick and afflicted, and whose charity and ministrations in these respects correspondingly relieves the state of such burdens." (Emphasis added).

The operant facts in *Groesbeck*, *supra*, are very similar to those in the instant case. At the time of the *Groesbeck* case, the Elks' Club owned and occupied a three-story building. The first two floors contained social club rooms, rooms for playing pool and cards, a luncheon room, and a buffet where liquor and cigars were sold. The third floor was used as the lodge area

and for meetings and did not raise any revenue. The court concluded that the *entire* property was entitled to an exemption. The members' social activities and the sales of liquor, cigars, and meals were declared to be *incidental* to the use made for charitable purposes.

An important factor leading the *Groesbeck* court to the conclusion that the property was used primarily for charitable purposes was that no part of the building in question was leased to third parties nor otherwise used for general business purposes. It was therefore distinguishable from *Parker v. Quinn*, *supra*, in which the Fifteenth Ward Relief Society owned a two-story building and leased the lower floor as storerooms. The portion of the property commercially rented was held to be taxable. Similarly, in *Odd Fellows Bldg. Ass'n. v. Naylor*, 53 Utah 111, 177 P. 214 (1918), involving a three-story lodge building, only the first floor which had been rented out as storerooms and a banquet hall were subject to taxation. However, by contrast the *entire* building in the instant case is *exclusively* occupied by Petitioner, *none* of the area being leased to third parties.

Many charitable functions and other important charitable uses such as the Goodwill Room, are directly provided for within the premises. In addition, the subject property serves a vital role in assembling and motivating a group dedicated to fraternal and charitable purposes, and in providing an area for the organization,

preparation, and planning of charitable programs many of which are, of necessity, effectuated at locations other than at the Lodge building itself.

“To maintain the organization it is necessary to have officers and committees, and to hold meetings, even though all of these may not be immediately concerned in dispensing charity. It must have a permanent meeting place, and in the building used for this purpose it has rooms for accommodating its membership, places where they may meet, not only to talk over lodge business concerned with the dispensation of charity, but for social purposes, to partake of refreshments, or to indulge in a game of cards or billiards. It is all a method of holding the members together, of solidifying the organization, to the end that charitable aims of the organization may be more effectively carried out. That is, the maintenance and occupation of the building and the use made of it as a whole by the organization tends directly to promote and further the purposes, and to carry out the objects for which the organization was created.” *Groesbeck, supra*, 40 Utah at 15-16, 120 P. at 196.

Finally, charity in the legal sense is not confined to mere almsgiving or the relief of poverty and distress. The promotion of goodwill, fellowship, and fraternalism as achieved in the programs of Petitioner are charitable in their nature. *See, Staines v. Burton*, 17 Utah 331, 53 P. 1015 (1898).

Petitioner believes that the Tax Commission erred when it refused to allow an exemption for the Elks' Lodge. Were the Court to accept the decision of the Tax Commission, serious detriment would occur. The statutory purpose for the rule exempting property for educational and charitable purposes or for public worship is that the state is presumed to receive benefits from the property equivalent at least to the public revenue that would otherwise be derived from it. Since the Tax Commission offers no standards for interpretation, the *in terrorem* effect of an unduly restrictive construction of the word "exclusive" is Article XIII Section 2 of the Constitution of the State of Utah and Utah Code Ann. § 59-2-1 (1953) could well prevent religious and charitable organizations from fulfilling important societal functions, by restricting their activities to those few which clearly fall within the exemption. Most hospitals receive income in the treatment and care of patients. Most churches are used for social entertainment, lectures, bazaars, and other purposes for which admission fees are charged. Buildings used for religious and charitable purposes do not *absolutely* exclude all other uses, nor should they have to be so used in order to retain their exemption if these other uses do not interfere with their primary purposes and uses.

Since neither the charitable nature of the organization nor the great value of the services it performs for the community are doubted here, the issue is whether the use of the subject property is so far removed from



the charitable and fraternal purposes outlined in the articles of incorporation, and the constitution and by-laws of Petitioner that it is no longer entitled to exemption from taxation. Petitioner contends that the unduly restrictive interpretation of the Utah Constitution and the laws pursuant to it as sustained by the Tax Commission was never the intent of the legislature, has not been so construed by this Court, and should not now be so construed.

## POINT II

IN THE ALTERNATIVE, THOSE AREAS OF THE ELKS' LODGE BEING USED EXCLUSIVELY FOR CHARITABLE PURPOSES SHOULD *A FORTIORI* BE GRANTED A PARTIAL EXEMPTION FROM TAXATION UNDER ARTICLE XIII SECTION 2 OF THE CONSTITUTION OF THE STATE OF UTAH AND UTAH CODE ANN. § 59-2-1 (1953).

Assuming that the strict construction of the Utah Constitution and relevant statute propounded by Respondent is proper in the instant case, a partial exemption should be granted to the Goodwill Room and other areas of the building which satisfy the exclusive charitable use requirement.

The policy of partial exemption was established in

Utah as early as 1901. In *Parker v. Quinn, supra*, the upper floor of a two-story building owned by the Relief Society was used for the holding of meetings and the performance of work by its members in furtherance of its charitable purposes. Those areas used for membership and charitable purposes were held to be exempt, while only the lower floor which was rented out to a third party was taxed. Again, in *Odd Fellows Bldg. Ass'n., supra*, the areas used for membership, lodge, and charitable purposes were not taxed, but only the first floor which was being rented commercially.

The great weight of authority in other states is in accord with the Utah position that statutes which exempt from taxation property used for certain purposes authorizes at least a partial exemption of a building, where part of the building is used for exempt purposes and part is used for nonexempt purposes. For example, in *Simpson v. Bohon*, 159 Fla. 280, 31 So.2d 406 (1947), only the 43% of an Elks' Club Lodge which was rented out for commercial purposes was subject to taxation. The exempted remainder occupied by the Lodge included the lodge room, storerooms, offices, a lounge, bar, kitchen, and recreation room.

In the hearing before the Tax Commission in the case at bar, Finding of Fact No. 5 provided as follows: "The third floor of the Elks' Lodge building, known as the Goodwill Room, is operated exclusively for charitable purposes and the distribution of clothing to the

needy.” This portion of the building meets the most stringent application of the constitutional and statutory requirements which Respondent has urged. Past Utah cases, as well as those of other jurisdictions, indicate that those portions of the building used for lodge purposes should also be exempt. This includes at least such non-revenue producing areas as the lodge room, committee rooms, office space, and storage and general maintenance areas.

If a change is to be made in the constitutional and statutory construction relating to charitable exemptions, the reliance interests of Petitioner will be better protected by making the changes operate only prospectively. In *Oklahoma County v. Queen City Lodge No. 197, I.O.O.F.*, 195 Okla. 131, 156 P.2d 340 (1945), a twelve-story building was owned by a lodge. The court there declared that the top floor occupied by the lodge was exempt and the eleven floors rented out commercially were subject to taxation. Under prior construction, the entire building would have been exempt. Since there were important reliance interests involved, however, the court determined that to avoid hardship the change in constitutional construction from total to partial exemption should operate only prospectively.

Wholly denying an exemption in a case where a partial exemption is appropriate has been declared to be reversible error. For example, in *Sahara Grotto v. State Bd. of Tax Comm'rs.*, 147 Ind. App. 471, 261

N.E.2d 873 (1970), the portion of a building used for fraternal and ritual purposes was found by the court to be exempt. The court concluded that the action taken by the tax commissioners in wholly denying the request for a tax exemption was an arbitrary and capricious abuse of discretion.

Petitioner, a charitable organization, exclusively owned, occupied, and used the property in question. The property was used in furtherance of the charitable objects and purposes contemplated in the organization's constitution and by-laws. This is not a case where the property, or a portion of it, was leased to another for a commercial or business purpose, or where the organization used it for a general business purpose. Petitioner contends that the rule of partial exemption conforms to the clearly expressed intent and desire to exempt property actually used for the exempt purposes and to avoid the necessity of declaring the complete loss of the exemption, that a significant portion, if not all, of the subject property is used for exempt purposes, and that the Tax Commission was utterly unjustified in wholly denying Petitioner's application for exemption.

## CONCLUSION

Petitioner respectfully submits to this Honorable Court that the Tax Commission erred in affirming the decision of the County Board of Equalization, and that this Court should direct the Tax Commission to make

and enter its order that the property known as the Elks' Lodge be removed from the Salt Lake County tax rolls as exempt property.

Respectfully submitted,

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